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## **REMARKS**

Applicants appreciate the Examiner's thorough consideration provided to the present application. Claims 1-10, 17-21 and 23-27 are currently pending in the instant application. Claim 27 has been amended. Claims 1, 8, 17 and 25 are independent. Reconsideration of the present application is earnestly solicited.

### **Reasons for Entry of Amendment**

As discussed in greater detail hereinafter, Applicants respectfully submit that the rejections under 35 U.S.C. § 103(a) are improper and should be withdrawn. Accordingly, the finality of the Final Office Action mailed on June 17, 2003 should be withdrawn.

If the Examiner persists in maintaining these rejections, Applicants submit that this Amendment was not presented at an earlier date in view of the fact that Applicants are responding to new grounds of rejection and the Examiner's use of Official Notice (and Applicants' subsequent traversal) in a Final Office Action. In accordance with the requirements of 37 CFR 1.116, Applicants respectfully request entry and consideration of the foregoing amendments as they address potential informalities with the claims and place the current application in a condition for allowance.

**Claim Rejections Under 35 U.S.C. § 112**

Claim 27 stands rejected under 35 U.S.C. § 112, first paragraph as allegedly lacking enablement. This rejection is respectfully traversed.

In light of the foregoing amendment to claim 27, Applicants respectfully submit that this rejection has been obviated and/or rendered moot. However, Applicants respectfully submit that the foregoing amendments have been made to merely clarify the claimed invention for the benefit of the Examiner.

Without conceding the propriety of the Examiner's rejection, but merely to timely advance the prosecution of the application, Applicants have amended claim 27 to state "wherein said innermost surface of said container wall surrounding said beverage container space is a seamless and smooth surface," e.g., to clarify the term "beverage containing space" as a "beverage container space." As seen in FIG. 7 of the present application, the insulated beverage container sleeve includes a beverage container space. The innermost surface of the container wall of the beverage container sleeve surrounds the beverage container space and includes a seamless and smooth surface.

Applicants submit that the above-described changes do not appear to either raise a substantial question of the patentability of the claimed invention nor do they narrow the scope of the claimed invention. Accordingly, this rejection should be withdrawn and the present application should be passed to Issue.

**Claim Rejections Under 35 U.S.C. § 103**

Claims 1-10, 17-21 and 23-27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Neale et al. (U.S. Patent No. 6,265,040). Claims 4, 9, 20 and 23 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Neale et al. in view of Iioka (U.S. Patent No. 4,435,344). These rejections are respectfully traversed.

Applicants respectfully submit that the prior art of record fails to teach or suggest each and every element of the unique combination of elements of the claimed invention. In addition, Applicants submit that the Neale et al. patent fails to teach or suggest all of the features of even the independent claims. Accordingly, these rejections should be withdrawn.

Specifically, with respect to claim 1, the prior art of record fails to teach or suggest the combination of elements of the claimed invention, including the limitation(s) of “a paper stock layer having an interior surface and an exterior surface, *said exterior surface of said paper stock layer forming the outermost surface of the said stock material*; a foam layer being disposed along the interior surface of the paper stock layer; and *a polyethylene film layer being disposed along the interior surface of the paper stock layer and in continuous and direct contact with said foam layer, wherein the foam layer or the polyethylene film layer forms said innermost surface of said stock material.*” (emphasis added)

Accordingly, this rejection should be withdrawn.

With respect to claim 8, the prior art of record fails to teach or suggest the combination of elements of the claimed invention, including the limitation(s) of “wherein said container wall further includes *a paper stock layer forming the outermost surface of said container wall; a thin polyethylene film layer* being arranged between said paper stock layer and said beverage containing space and *forming said innermost surface of said container wall;* and *a foam layer* arranged along an interior surface of the paper stock layer and in *continuous and direct contact with said polyethylene film layer,* said foam layer being sandwiched between said polyethylene film layer and said paper stock layer.” (emphasis added) Accordingly, this rejection should be withdrawn.

With respect to claim 17, the prior art of record fails to teach or suggest the combination of elements of the claimed invention, including the limitation(s) of “*an insulated beverage container sleeve comprising a bottomless container wall having a sidewall enclosing a beverage container space, said sidewall including an innermost surface and an outermost surface; a paper stock layer forming the outermost surface of said sidewall; a polyethylene film layer being disposed along the interior surface of said paper stock layer in continuous and direct contact with said foam layer,* wherein said foam layer or said polyethylene film layer *forms said innermost surface of said sleeve.*” (emphasis added) Accordingly, this rejection should be withdrawn.

With respect to claim 25, the prior art of record fails to teach or suggest the combination of elements of the claimed invention, including the limitation(s) of “*a paper stock layer forming the outermost surface* of said container wall; a thin polyethylene film layer being arranged between said paper stock layer and said beverage containing space; and *a foam layer arranged along an interior surface of the container wall and forming an innermost surface* of said container wall, *said polyethylene film layer being in continuous and direct contact with said foam layer* and being sandwiched between said foam layer and said paper stock layer.” (emphasis added) Accordingly, this rejection should be withdrawn.

Applicants respectfully submit that the Examiner has misinterpreted the Neale et al. patent. For example, the Examiner points to col. 2, lines 27-30 to allege the use of a thin polyethylene film layer which “makes the cup impervious to moisture and which also seals the cup after the blank (col. 2, lines 1.27-30).” However, this discussion in the Neale et al. reference is merely aimed at paperstock containers of the background art having a polyethylene film layer. Accordingly, Neale et al. are actually distinguishing the container of this reference from previous containers of the background art that included polyethylene film layers.

For example, at col. 2, lines 45-55, the Examiner will note that in the Neale et al. sleeve or container, a single walled blank (paper stock or plastic) is

coated with a layer of insulation. However, this layer of insulation is not a polyethylene film layer. Instead, this layer of insulation is a syntactic foam including insulating particles, e.g., such as void containing particles, held in place by a binder. Accordingly, there is no teaching or suggestion of the application of a polyethylene layer to the container of Neale et al., e.g., the reference is clearly teaching embodiments without a polyethylene film layer. Further, Neale et al. is clearly not providing any teaching or suggestion of a combination of layers of paper stock, foam *and* a polyethylene film. For example, the Examiner will note that in the claims of the Neale et al. patent, all of the claimed embodiments include a sidewall, a thin thermally insulating coating having a binder and void containing particles, ranging from 0.1 microns to 200 microns in size, and a heat activated adhesive. However, Applicants submit that Neale et al. do not teach or suggest any combination including a polyethylene film layer.

In addition, the Examiner has indicated that Neale et al. fails to teach or suggest all of the features of the claimed invention (see Final Office Action, pages 5-6). The Examiner indicates that "Neale et al fail to explicitly teach the specific layer order claimed. However, Neale et al. teach that a paper stock material forming a paper cup in order to make the cup liquid and moisture impervious." First, as discussed hereinabove, Neale et al. fails to teach or suggest any combination of a paper stock layer, a foam layer and a

polyethylene film layer. Second, the Examiner is allegedly rearranging the layers of the Neale et al. reference to read on the claimed invention. Since the Examiner has not provided a secondary reference to support this alleged modification, Applicants submit that this use of Official Notice of what would have been obvious to one of ordinary skill in the art is improper in a Final Office Action. Accordingly, Applicants respectfully request that the Examiner augment the record with actual evidence from the prior art to support the alleged modification of the Neale et al. reference described in the Final Office Action.

In addition, Applicants request that the Examiner clearly point out where polyethyelene film particles or a film layer is allegedly taught in the Neale et al. reference if these rejections are maintained in any form responsive to this Amendment. Applicants submit that Neale's void containing particles are actually polyvinylidene. Polyethylene particles would be too rigid for the type of fluid coating desired by Neale et al.

For example, the Examiner will also note that Neale's void containing particles may be Pierce and Stevens "Dualite" microspheres (col 6, line 30-33). Applicants submit that this further emphasizes the lack of any polyethylene in the embodiment(s) of Neale et al. These microsphers are polyvinylidene copolymers (col. 5, line 67). Polyvinylidene is an expandable material. In contrast, polyethylene is more rigid and unsuitable for expandable aqueous

based coatings. Accordingly, polyvinylidene (not polyethylene) is used as the void containing particle, and taught by Neale as expanding (col. 5, lines 58-64).

A further deficiency of polyvinylidene void particles is that they are a poor sealant and adherent, particularly for cup seams. Accordingly, the cups would leak if arranged as alleged by the Examiner. Note, Fig. 2b of Neale et al., the thermally insulating coating 30 does not extend to the edges of the sleeve blank. An uncoated or adhesive coated area is needed to effect sealing which the polyvinylidene, if coated to the edge, would hinder and make for a leaky, not watertight seal. This aspect is further reflected in Neale at col. 5, lines 17-22, ". . . thermally insulating outer coating 30 which may not cover the entirety of the blank but which can leave a frame 31 uncoated so that the inside can seal the sidewall at seam 26."

Further, Neale et al. do not teach the use of extruded or laminated foam. Neale et al. rely on a coating of a binder material with void containing microspheres, fillers, extenders and other ingredients to form a coating. The only foam remotely suggested by Neale et al. appears to be a syntactic foam having void containing particles.

The Neale coating is not watertight, is subject to hot fluid infiltration, includes various binders and fillers making the coating not suitable for contact with hot fluids such as hot coffee. At col. 2, line 50, Neale et al. describes the application of the insulating coating on the internal side (inside) of the sidewall,

e.g., in reference to a sleeve for a cup. Although Neale et al. teach the sleeve can form the cup stock, this is a dry contact surface. The insulation material is not well suited as internal sidewall cup stock because of the presence of leachable binders, fillers, and the various coating extenders and added materials. It also would hinder sealing.

Therefore, all of the rejections based upon the Neale et al. patent should be withdrawn and the present application should be passed to Issue. Since Neale et al. fail to teach or suggest all of the features of even the independent claims, and the Iioka reference fails to cure these deficiencies, the rejection based upon Neale et al. reference in view of Iioka is improper.

In accordance with the above discussion of the patents relied upon by the Examiner, Applicants respectfully submit that these documents, either in combination together or standing alone, fail to teach or suggest the invention as is set forth by the claims of the instant application.

Accordingly, reconsideration and withdrawal of the claim rejection are respectfully requested. Moreover, Applicants respectfully submit that the instant application is in a condition for allowance.

As to the dependent claims, Applicants respectfully submit that these claims are allowable due to their dependence upon an allowable independent claim, as well as for additional limitations provided by these claims.

## CONCLUSION

Since the remaining patents cited by the Examiner have not been utilized to reject the claims, but rather to merely show the state-of-the-art, no further comments are necessary with respect thereto.

It is believed that a full and complete response has been made to the Office Action, and that as such, the Examiner is respectfully requested to send the application to Issue.

In the event there are any matters remaining in this application, the Examiner is invited to contact Matthew T. Shanley, Registration No. 47,074 at (703) 205-8000 in the Washington, D.C. area.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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